

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

TONY COLIDA	:	
	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 09-1316 (JLL)
	:	
PANASONIC CORP. OF NORTH	:	
AMERICA	:	ORDER
	:	
Defendants.	:	
	:	

LINARES, District Judge.

This matter comes before the Court upon Plaintiff Tony Colida's ("Plaintiff" or "Colida") March 23, 2009 filing of a Complaint and application to proceed in forma pauperis (IFP"). Colida alleges that Defendant Panasonic Corporation of North America ("Defendant") has infringed on his design patent (U.S. Patent No. 321,184) in the producing and selling of portable handheld telephones. (Compl. ¶ 3-5.)

Pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1), the Court proceeds to review and screen the complaint. Under those provisions, a court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who retains immunity from such relief. "Repetitious litigation of virtually identical causes of action may be dismissed under § 1915 as frivolous or malicious." Adams v. Legenstein, No. 08-769, 2009 WL 363888, at *2 (D. Del. Feb. 13, 2009) (quoting McWilliams v. Colorado, 121 F.3d 573, 574 (10th Cir. 1997)).

In the instant suit, Colida alleges the same facts and allegations as those filed in an

identical complaint against Defendant by Colida, captioned Colida v. Panasonic Corp. of North America, et al., Civil Action No. 05-5527 (JAG). In the 05-5527 action, Magistrate Judge Madeline Cox Arleo denied Colida's application to proceed *in forma pauperis*. (Civil Action no. 05-5527, Docket Entry # 43.) On December 12, 2008, Judge Greenaway denied Plaintiff's motion to reconsider Judge Arleo's April 10, 2006 Opinion. (Id., Docket Entry # 64). Currently, Judge Greenaway's decision is on appeal to the Third Circuit.

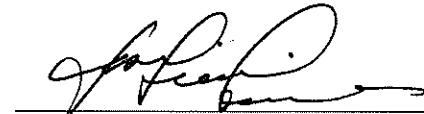
Now Colida files the same Complaint requesting once again to proceed *in forma pauperis*. That application has already been denied twice. Plaintiff is not entitled to take a third bite at the apple simply by re-filing the application with a different Judge in this Court. Rather, Plaintiff shall await the decision of the Third Circuit regarding his appeal in the 05-5527 case. In this Court, however, his complaint is dismissed as frivolous pursuant to 28 U.S.C. §1915(e)(2)(B) and § 1915A(b)(1).

Accordingly, **IT IS ON THIS** 31st day of March, 2009,

ORDERED that Plaintiff's complaint is dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1); and it is further

ORDERED that the Clerk of the Court shall close the file in this matter.

SO ORDERED.



Jose L. Linares
United States District Judge